Not To Be Published:

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION

ANGELA OBRECHT, Plaintiff, vs. ELECTROLUX HOME PRODUCTS, INC., Defendant.	No. C04-3089-MWB **MEMORANDUM OPINION AND ORDER REGARDING DEFENDANT'S MOTION TO DISMISS**

TABLE OF CONTENTS

I. INTRODUCTION AND BACKGROUND

On a motion to dismiss, the court must assume all facts alleged in the plaintiff's complaint are true, and must liberally construe those allegations. *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957). Therefore, the following factual background is drawn from the plaintiff's complaint in such a manner.

Plaintiff Angela Obrecht ("Obrecht") began working for Electrolux Home Products, Inc. ("Electrolux") as a general operator at Electrolux's Webster City, Iowa, facility in approximately February 1986. On or about March 17, 2003, Obrecht filed a workers' compensation claim against Electrolux claiming work related injuries to her cervical spine and upper extremities on September 15, 1999, and April 10, 2002. The claim ultimately resulted in a Compromise Special Case Settlement ("settlement") pursuant to Iowa Code section 85.35 signed by the parties on October 31, 2003. Also on October 31, 2003, Electrolux terminated Obrecht's employment—claiming that her termination was a term of the settlement agreement reached in the workers' compensation matter. In a letter to Obrecht dated November 4, 2003, Electrolux stated:

> As a part of a settlement agreement in a worker's compensation matter which was signed by you, it was agreed that your continued employment with Electrolux would be concluded upon approval and payment pursuant to the terms of the agreement. The agreement has been approved and payment was made to you accordingly. Therefore, on 10-31-03 we consider our employment relationship terminated.

Petition and Jury Demand, Doc. No. 2, Exh. B, at ¶ 11. Obrecht contends she did not agree that her employment with Electrolux would be terminated upon approval and payment of the settlement, and the settlement agreement provided no such term or condition—although, the approved settlement does contain the following language: "It is further understood and agreed that claimant and defendant-employer are mutually released

and discharged from any further obligations of continued employment." Application for Compromise Special Case Settlement, attachment "A" to Petition and Jury Demand, Doc. No. 2, Exh. B ("settlement agreement"). Obrecht was represented by counsel at the time she signed the settlement agreement. At the time of her termination, Obrecht was fully capable of performing her job duties. Obrecht contested her termination, but Electrolux refused to reconsider its earlier position and refused to reinstate her.

On October 13, 2004, Obrecht filed a Petition and Jury Demand against Electrolux in the Iowa District Court in and for Hamilton County, alleging a single count of wrongful discharge in violation of public policy—specifically, that she was terminated in retaliation for filing the workers' compensation claim against Electrolux. Petition and Jury Demand, Doc. No. 2, Exh. B. On November 19, 2004, Electrolux removed the matter to this court by filing a Notice of Removal. (Doc. No. 2). Electrolux averred that this court had subject matter jurisdiction based on the complete diversity of the parties—Obrecht as a resident of Iowa and Electrolux as a corporation incorporated in Delaware with its principal place of business in Ohio—and an amount in controversy in excess of $75,000.00. *See* 28 U.S.C. § 1332(a)(1). Electrolux additionally stated that it had filed its removal within thirty days of being served with Obrecht's original complaint. After requesting, and being granted, an extension of time in which to file an answer, Electrolux ultimately opted to file a Motion to Dismiss on December 17, 2004. (Doc. No. 5). Electrolux couched its arguments for dismissal in Obrecht's failure to state a claim upon which relief could be granted under Federal Rule of Civil Procedure 12(b)(6). Obrecht formally filed a resistance to the motion on December 22, 2004, but requested additional time in which to file her memorandum in support of the motion. (Doc. Nos. 9 & 11). Obrecht's request was granted, and, in accordance with the extension, Obrecht filed a Memorandum of Authorities in Support of Plaintiff's Resistance to Defendant Electrolux Home Products,

Inc.'s Motion to Dismiss on January 17, 2005. (Doc. No. 16). Electrolux filed a timely Reply Memorandum in Support of Its Motion to Dismiss on January 20, 2005. (Doc. No. 19). The matter is now fully submitted and ready for determination by this court.

II. LEGAL ANALYSIS

A. Rule 12(b)(6) Standards

The issue on a Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted is not whether a plaintiff will ultimately prevail, but whether the plaintiff is entitled to offer evidence in support of his, her, or its claims. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974); *United States v. Aceto Agric. Chem. Corp.*, 872 F.2d 1373, 1376 (8th Cir. 1989). In considering a motion to dismiss under Rule 12(b)(6), the court must assume that all facts alleged by the complaining party, here Obrecht, are true, and must liberally construe those allegations. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Gross v. Weber*, 186 F.3d 1089, 1090 (8th Cir. 1999) ("On a motion to dismiss, we review the district court's decision de novo, accepting all the factual allegations of the complaint as true and construing them in the light most favorable to [the non-movant]."); *St. Croix Waterway Ass'n v. Meyer*, 178 F.3d 515, 519 (8th Cir. 1999) ("We take the well-pleaded allegations in the complaint as true and view the complaint, and all reasonable inferences arising therefrom, in the light most favorable to the plaintiff."); *Gordon v. Hansen*, 168 F.3d 1109, 1113 (8th Cir. 1999) (same); *Midwestern Machinery, Inc. v. Northwest Airlines*, 167 F.3d 439, 441 (8th Cir. 1999) (same); *Wisdom v. First Midwest Bank*, 167 F.3d 402, 405 (8th Cir. 1999) (same); *Duffy v. Landberg*, 133 F.3d 1120, 1122 (8th Cir.) (same), *cert. denied*, 525 U.S. 821 (1998); *Doe v. Norwest Bank Minn., N.A.*, 107 F.3d 1297, 1303-04 (8th Cir. 1997) (same); *WMX Techs., Inc. v. Gasconade County, Mo.*, 105 F.3d 1195, 1198 (8th Cir. 1997) (same); *First Commercial Trust v. Colt's Mfg.*

Co., 77 F.3d 1081, 1083 (8th Cir. 1996) (same).

On a motion to dismiss pursuant to Rule 12(b)(6), the court ordinarily cannot consider matters outside of the pleadings, unless the court converts the Rule 12(b)(6) motion into a motion for summary judgment pursuant to Rule 56. *See* FED. R. CIV. P. 12(b)(6); *see also Buck v. F.D.I.C.*, 75 F.3d 1285, 1288 & n.3 (8th Cir. 1996). However, on a motion to dismiss, the court may consider certain matters outside of the pleadings without converting the motion into a motion for summary judgment. For example, the court may consider documents outside of the pleadings where "the plaintiffs' claims are based solely on interpretation of the documents [submitted] and [the] parties do not dispute the actual contents of the documents." *Jenisio v. Ozark Airlines, Inc., Retirement Plan*, 187 F.3d 970, 972 n.3 (8th Cir. 1999) (citing *Silver v. H & R Block, Inc.*, 105 F.3d 394, 397 (8th Cir. 1997)). Thus, as the parties do not object to the language of the settlement agreement, but only to the construction and interpretation of that language, this court may properly consider the settlement agreement on Electrolux's motion to dismiss pursuant to Rule 12(b)(6).

The court is mindful that, in treating the factual allegations of a complaint as true pursuant to Rule 12(b)(6), the court must "reject conclusory allegations of law and unwarranted inferences." *Silver*, 105 F.3d at 397 (citing *In re Syntex Corp. Securities Lit.*, 95 F.3d 922, 926 (9th Cir. 1996)); *Westcott v. City of Omaha*, 901 F.2d 1486, 1488 (8th Cir. 1990) (the court "do[es] not, however, blindly accept the legal conclusions drawn by the pleader from the facts," citing *Morgan v. Church's Fried Chicken*, 829 F.2d 10, 12 (6th Cir. 1987), and 5 C. Wright & A. Miller, FEDERAL PRACTICE AND PROCEDURE § 1357, at 595-97 (1969)); *see also LRL Properties v. Portage Metro Hous. Auth.*, 55 F.3d 1097, 1103 (6th Cir. 1995) (the court "need not accept as true legal conclusions or unwarranted factual inferences," quoting *Morgan*, 829 F.2d at 12). Conclusory allegations

need not and will not be taken as true; rather, the court will consider whether the *facts* alleged in the plaintiffs' complaint, accepted as true, are sufficient to state a claim upon which relief can be granted. *Silver*, 105 F.3d at 397; *Westcott*, 901 F.2d at 1488.

The United States Supreme Court and the Eighth Circuit Court of Appeals have both observed that "a court should grant the motion and dismiss the action 'only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" *Handeen v. Lemaire*, 112 F.3d 1339, 1347 (8th Cir. 1997) (quoting *Hishon v. King & Spalding*, 467 U.S. 69, 73, 104 S. Ct. 2229, 81 L. Ed. 2d 59 (1984)); *accord Conley,* 355 U.S. at 45-46 ("A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his [or her] claim which would entitle him [or her] to relief."); *Meyer*, 178 F.3d at 519 ("The question before the district court, and this court on appeal, is whether the plaintiff can prove any set of facts which would entitle the plaintiff to relief" and "[t]he complaint should be dismissed 'only if it is clear that no relief can be granted under any set of facts that could be proved consistent with the allegations,'" quoting *Frey v. City of Herculaneum*, 44 F.3d 667, 671 (8th Cir. 1995)); *Gordon*, 168 F.3d at 1113 ("We will not dismiss a complaint for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts that would demonstrate an entitlement to relief."); *Midwestern Machinery, Inc.*, 167 F.3d at 441 (same); *Springdale Educ. Ass'n v. Springdale Sch. Dist.*, 133 F.3d 649, 651 (8th Cir. 1998) (same); *Parnes v. Gateway 2000, Inc.*, 122 F.3d 539, 546 (8th Cir. 1997) (same); *Doe*, 107 F.3d at 1304 (same); *WMX Techs., Inc.*, 105 F.3d at 1198 (same). Rule 12(b)(6) does not countenance dismissals based on a judge's disbelief of a complaint's factual allegations. *Neitzke v. Williams*, 490 U.S. 319, 327, 109 S. Ct. 1827, 104 L. Ed. 2d 338 (1989). Thus, "[a] motion to dismiss should be granted as a practical matter only in the unusual case in which

a plaintiff includes allegations that show on the face of the complaint that there is some insuperable bar to relief." *Frey*, 44 F.3d at 671 (internal quotation marks and ellipses omitted); *accord Parnes*, 122 F.3d at 546 (also considering whether there is an "insuperable bar to relief" on the claim).

B. Arguments Of The Parties

Electrolux asserts two arguments for dismissal of this action under Rule 12(b)(6). The first is based on the settlement agreement reached by the parties which Electrolux claims discharged it from "any further obligations of continued employment." Electrolux further asserts that even if Obrecht did not read the language of the settlement agreement, Iowa law would still bind her to the terms of that agreement. Electrolux also argues that any claim that the settlement agreement did not provide for termination of Obrecht's employment should be disregarded as at odds with the specific language of the agreement. As the language of the settlement agreement is express, and determinative, Electrolux asserts that this case should be dismissed. Secondly, though recognizing that Iowa has declared it against public policy for an employer to terminate an employee for pursuing a workers' compensation claim, Electrolux contends that its possibly erroneous, but good faith, reliance on the settlement agreement cannot rise to the level of tortious public policy workers' compensation retaliation as a matter of law. For this reason, Electrolux claims that it is entitled to a dismissal.

In resistance, Obrecht offers the following four reasons why the defendant's arguments are faulty and her case should not be dismissed under Rule 12(b)(6): (1) the language of the settlement agreement relied on by Electrolux is void as violative of Iowa public policy; (2) the settlement agreement is void as a result of a unilateral mistake—that the plaintiff did not understand the portion relied on by Electrolux to require her

dismissal—which raises issues of fact not properly disposed of in a motion to dismiss; (3) the settlement agreement language relied on by Electrolux is reasonably capable of more than one meaning, thus creating an ambiguity that can only be resolved via consultation with extrinsic evidence not appropriate for consideration on a motion to dismiss; and (4) whether or not Obrecht's discharge was tortious is a fact question that cannot, and should not, be resolved on a motion to dismiss.

In reply, Electrolux counters each of Obrecht's proffered basis in resistance to its motion to dismiss. In response to the plaintiff's argument that the settlement agreement violates Iowa public policy, Electrolux contends that only grave public policy concerns (which are not present here) will override principles of freedom of contract. Electrolux also contends that even if the court finds that relinquishment of employment is against Iowa public policy unless it is contained in a separate document, Electrolux's justifiable reliance on the settlement agreement language prevents any claim for tortious workers' compensation retaliation. Electrolux attacks Obrecht's unilateral mistake argument, arguing that under Iowa law, a unilateral mistake does not release a party from a contract absent a showing of fraud, misrepresentation or other conduct—and none of these circumstances are present here. Finally, turning to the ambiguity argument, Electrolux claims the contractual release from future obligations of employment is unambiguous and should be enforced as a matter of law.

C. General Legal Principles

1. Retaliatory discharge in violation of public policy

The Iowa Supreme Court has recognized a public policy exception to the employment-at-will doctrine when an employee is discharged in a matter that clearly violates a "well-recognized and defined public policy of [Iowa]." *Borschel v. City of Perry*, 512 N.W.2d 565, 566 (Iowa 1994); *French v. Foods, Inc.*, 495 N.W.2d 768, 769-70 (Iowa 1993). Such a discharge in violation of a clearly defined public policy gives rise to a cause of action sounding in tort against the offending employer. *Lara v. Thomas*, 512 N.W.2d 777, 782 (Iowa 1994) ("An employer may be liable in tort for the retaliatory discharge of an employee when the discharge violates a clearly expressed public policy of this state."); *Smith v. Smithway Motor Xpress, Inc.*, 464 N.W.2d 682, 685 (Iowa 1990) (holding that retaliatory discharge violates public policy even where the employer does not interfere with the employee's receipt of workers' compensation benefits). In *Springer v. Weeks & Leo Co.*, 429 N.W.2d 558 (Iowa 1988), the Iowa Supreme Court "recognized a common law tort action for retaliatory discharge based on the filing of a workers' compensation claim by an at-will employee." *Conaway v. Webster City Prods. Co.*, 431 N.W.2d 795, 796 (Iowa 1988) (citing *Springer*, 429 N.W.2d at 560); *see also Niblo v. Parr Mfg.*, 445 N.W.2d 351, 352-52 (Iowa 1989); *Fogel v. Trustees of Iowa College*, 446 N.W.2d 451, 455 (Iowa 1989) (retaliatory discharge creates liability in tort when the discharge is against public policy); *Engstrom v. State*, 461 N.W.2d 309, 314 (Iowa 1990) (same); *French*, 495 N.W.2d at 771 (recognizing retaliatory discharge as a common-law tort). The *Springer* court held that the clearly defined public policy involved in discharge in retaliation for filing a workers' compensation claim is housed in Iowa Code § 85.18, which provides:

> No contract, rule, or device whatsoever shall operate to relieve

> the employer, in whole or in part, from any liability created by this chapter except as herein provided.

IOWA CODE § 85.18 (2004). The Iowa Supreme Court recognized section 85.18 as "a clear expression that it is the public policy of this state that an employee's right to seek the compensation which is granted by law for work-related injuries should not be interfered with regardless of the terms of the contract of hire." *Springer*, 429 N.W.2d at 560-61.

"A claim of retaliatory discharge under Iowa law requires a prima facie showing that (1) the employee engaged in a protected activity; (2) an adverse employment action occurred; and (3) a causal link exists between the protected activity and the adverse action." *Webner v. Titan Distribution, Inc.*, 267 F.3d 828, 835 (8th Cir. 2001) (citing *Teachout v. Forest City Cmty. Sch. Dist.*, 584 N.W.2d 296, 299 (Iowa 1998)). In the workers' compensation context, an essential element of the claim of retaliatory discharge in violation of public policy is a showing that the employee's filing of the workers' compensation claim was the employer's specific motivation for discharging them. *Sanford v. Meadow Gold Dairies, Inc.*, 534 N.W.2d 410, 412 (Iowa 1995).

2. Invalidation of contract based on public policy

In *Rogers v. Webb*, 558 N.W.2d 155 (Iowa 1997), the Iowa Supreme Court discussed the principles behind holding a contract invalid as a violation of public policy:

> Contracts that contravene public policy will not be enforced. *Walker v. American Family Mut. Ins. Co.*, 340 N.W.2d 599, 601 (Iowa 1983); *Wunschel Law Firm, P.C. v. Clabaugh*, 291 N.W.2d 331, 335 (Iowa 1980); *Rowen v. Le Mars Mut. Ins. Co.*, 282 N.W.2d 639, 650 (Iowa 1979); *see also* Restatement (Second) of Contracts § 178 (1979). This "power to invalidate a contract on public policy grounds must be used cautiously and exercised only in cases free from doubt." *DeVetter v. Principal Mut. Life Ins. Co.*, 516 N.W.2d 792, 794 (Iowa 1994). This is because whenever this court considers

> invalidating a contract on public policy grounds it must "also weigh in the balance the parties' freedom to contract." *Walker*, 340 N.W.2d at 601.
>
> The term "public policy" is not easily defined but we have said that the thrust of the term is quite clear: "a court ought not enforce a contract which tends to be injurious to the public or contrary to the public good." *Id.* (citing *In re Estate of Barnes*, 256 Iowa 1043, 1051-52, 128 N.W.2d 188, 192 (1964)). Thus a contract may be invalidated if it would "violate any established interest of society." *Walker*, 340 N.W.2d at 601. It is "not necessary that the contract actually cause the feared evil in a given case; its tendency to have that result is sufficient." *Wunschel Law Firm*, 291 N.W.2d at 335 (citing *Jones v. American Home Finding Ass'n*, 191 Iowa 211, 213, 182 N.W. 191, 192 (1921)). Thus, before we strike down a contract based upon public policy, we must conclude that "the preservation of the general public welfare imperatively so demands invalidation so as to outweigh the weighty societal interest in the freedom of contract." *DeVetter*, 516. N.W.2d at 794.

Id. at 156-57; *see also Walker v. Gribble*, 689 N.W.2d 104, 110-11 (Iowa 2004) (noting same principles and applying them to the settlement agreement in dispute); *Grinnell Mut. Reinsurance Co. v. Jungling*, 654 N.W.2d 530, 540 (Iowa 2002) ("We have recognized that '[t]here is certain danger in too freely invalidating private contracts on the basis of public policy. . . . [F]or a court to undertake to invalidate private contracts upon the ground of "public policy" is to mount "a very unruly horse, and when you get astride it, you never know where it will carry you."'") (quoting *Skyline Harvestore Sys., Inc. v. Centennial Ins. Co.*, 331 N.W.2d 106, 109 (Iowa 1983)) (citation and quotation omitted); *Harvey v. Care Initiatives, Inc.*, 634 N.W.2d 681, 684 n.4 (Iowa 2001) ("a contract in violation of public policy is void"); *Tschirgi v. Merchants Nat'l Bank of Cedar Rapids*,

113 N.W.2d 226, 231 (Iowa 1962) ("It is not the court's function to curtail the liberty to contract by enabling parties to escape their valid contractual obligation on the ground of public policy unless the preservation of the general public welfare imperatively so demands."). In determining whether a contract contravenes the public policy of the state, courts look to the Constitution, statutes, and judicial decisions of the state, to determine its public policy and that which is not prohibited by statute, condemned by judicial decision, nor contrary to the public morals contravenes no principle of public policy." *In re Marriage of Witten*, 672 N.W.2d 768, 780 (Iowa 2003); *see also Mincks Agri Center, Inc. v. Bell Farms, Inc.*, 611 N.W.2d 270, 275-76 (Iowa 2000). The courts "will not eviscerate a contractual provision unless the preservation of the general public welfare imperatively demands it." *Shelter Gen. Ins. Co. v. Lincoln*, 590 N.W.2d 726, 730(Iowa 1999).

D. Analysis

Viewing the facts alleged in Obrecht's complaint as true, as the court is required to do in addressing a Rule 12(b)(6) motion to dismiss, the following basic scenario emerges. Obrecht filed a workers' compensation claim against Electrolux alleging work-related injuries on two different dates. Obrecht and Electrolux enter into a settlement agreement as to that workers' compensation claim. This settlement agreement, in part, states: "It is further understood and agreed that claimant and defendant-employer are mutually released and discharged from any further obligations of continued employment." Application for Compromise Special Case Settlement, Petition and Jury Demand, Doc. No. 2, Exh. A. After complying with the terms of the settlement agreement, Electrolux promptly terminated Obrecht's employment in retaliation for filing her workers' compensation claims. However, Electrolux contends it did so terminate Obrecht under the belief that the

settlement agreement language sanctioned her termination, even if the decision to terminate Obrecht's employment was in retaliation for filing a workers' compensation claim.

As previously discussed, "[t]he Supreme Court of Iowa has recognized that when an employee is terminated in retaliation for asserting [her] right to workers' compensation benefits, a public policy is violated." *Webner*, 267 F.3d at 835 (citing *Below v. Skarr*, 569 N.W.2d 510, 511 (Iowa 1997) and *Springer*, 429 N.W.2d at 559-60). Iowa has a clear, and express, public policy *against* retaliation for filing a workers' compensation claim. *See id*. Because of this clear, and well-defined, public policy there can be no doubt that any reading of the settlement agreement language which would *condone* an employer discharging an employee in retaliation for filing a workers' compensation charge would be voided as against this clear public policy. *See Walker*, 689 N.W.2d at 111 (noting that contracts will be invalidated "on public policy grounds 'only in cases free from doubt.'") (citing *DeVetter*, 516 N.W.2d at 794); *Springer*, 429 N.W.2d at 560 (recognizing public policy embodied in Iowa Code § 85.18 against retaliation for seeking workers' compensation benefits). This court finds that an interpretation of the contract language as allowing for retaliatory discharge in contravention of well-grounded Iowa public policy would clearly outweigh any interest in the freedom of contract. *See Rogers*, 558 N.W.2d at 158; *Bergantzel v. Mlynarik*, 619 N.W.2d 309, 317 (Iowa 2000) (quoting Restatement § 178).

Electrolux urges that even if the settlement agreement provision is against Iowa's public policy interests, its reliance on the legality of the provision exonerates it from engaging in tortious workers' compensation retaliation and therefore its motion to dismiss should be granted. The court finds this argument unpersuasive. In any retaliation in violation of public policy case, the plaintiff must establish causation between her filing of the workers' compensation claim and an adverse employment action—which embodies a

showing that the employer's specific motivation in discharging her was the filing of the workers' compensation claim. *See Sanford*, 534 N.W.2d at 412; *Smith*, 464 N.W.2d at 685; *Springer*, 429 N.W.2d at 559; *see also Weinzetl v. Ruan Single Source Transp. Co.*, 587 N.W.2d 809, 811 (Iowa Ct. App. 1998) (noting that to recover the plaintiffs had to prove that "their protected conduct of seeking workers' compensation benefits was a determining factor in [the defendant's] decision to terminate their employment."); *Graves v. O'Hara*, 576 N.W.2d 625, 628 (Iowa Ct. App. 1998) (same). Now, Electrolux's good faith reliance on an interpretation of the settlement language that is against Iowa public policy (i.e. permitting Electrolux to discharge Obrecht in retaliation for filing her workers' compensation claim) would not insulate it from Obrecht's retaliatory discharge claim in this case as that interpretation of the settlement agreement language would make it void as against public policy and the specific retaliatory intent would exist. On the other hand, Electrolux's good faith reliance on an interpretation of the settlement language that is *not* violative of Iowa public policy (i.e. permitting Electrolux to discharge Obrecht for other reasons that are not against public policy) would mitigate against a finding of the requisite specific intent necessary to sustain a retaliatory discharge claim. In this case, on a motion to dismiss, the court must view the facts in the complaint as true—here, that Electrolux terminated Obrecht in retaliation for her filing a workers' compensation claim. Viewing this allegation in the complaint as true, any reliance that Electrolux had on the settlement agreement language as supporting its termination of Obrecht would necessarily be on an interpretation of the settlement agreement that is violative of Iowa public policy. Thus, in this instance, dismissal of Obrecht's claim is not justified.

III. CONCLUSION

For the reasons set forth in detail about, Electrolux's motion to dismiss is **denied**. The parties have **until April 4, 2005**, to file a Scheduling Report.

IT IS SO ORDERED.

DATED this 9th day of March, 2005.

Mark W. Bennett

MARK W. BENNETT
CHIEF JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA